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Applicant's period of time, as recited in claim 8, is a time period over which a candidate channel must have an acceptable level of noise. This is a time period over which at least some reasonable use may be made of the channel. Applicant's arrangement is looking for the longest continuous regularly recurring period of time for which a channel has an acceptable noise level. Such a channel can then be assigned for use over the duration that it is expected to have an acceptable noise level.

By contrast, the time period of Moran III et al. pointed out by the Office Action is the time required to take a noise power level reading at various frequencies. There is no relationship between this time period of Moran III et al. and a time period over which a candidate channel must have an acceptable level of noise. Instead, this time period of Moran III et al. is related to the bandwidth resolution of the particular analyzer being employed to take the measurements. (See Moran III et al., column 6, lines 5-9.) It has nothing to do with the time period over which a candidate channel must have an acceptable level of noise. Thus, nothing taught about the time period in Moran III et al., including whether or not to reduce it in any manner, has any bearing on applicant's claim, since the Moran III et al. time period is unrelated in any way to the time period recited in applicant's claim.

Additionally, the resolution bandwidth being controlled in Moran III et al. is that of the analyzer. Similarly, the FFT being discussed in Moran III et al. is that performed by the analyzer. Again, neither of these elements relates to a channel and to the time period over which a candidate channel must have an acceptable level of noise, or to reducing such a time period.

Thus, Moran III et al. does not teach that for which it is cited by the Office Action, and hence the element admitted by the Office Action to be missing from Naegel et al. is not supplied by Moran III et al. Thus, a combination of Naegel et al. and Moran III et al. does not teach or suggest all of the elements of applicant's claim, and so applicant's claim is allowable over the combination of Naegel et al. and Moran III et al. under 35 U.S.C. 103.

Applicant further believes that one of ordinary skill in the art would not be motivated to combine Naegel et al. and Moran III et al. In this regard, applicant notes that

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Nagel et al. appears to teach continual monitoring of the noise level on a channel using an FFT at regular, unchanging, short term intervals, e.g., every several milliseconds. (See Nagel et al., column 11, line 62 through column 12, line 1.) More specifically, Nagel et al. does not teach an initial prescribed period of time over which to search to find an acceptable noise level in a channel as required by applicant's claim 8. Nagel et al. appears to simply search to find an acceptable noise level in a channel over a fixed period of time that is as short as possible. There is no teaching or suggestion to reduce this time period.

It seems that Nagel et al. is looking in real time to determine when a channel has an unacceptably high noise level and thus is not available for use. As soon as the noise level is reduced to an acceptable level, the channel is made available again for use. There is no notion of a period of time over which it can be known that the noise on the channel will be acceptably low, and thus the channel can be regularly used for that period.

By contrast, applicant's invention has a different of philosophy than that Nagel et al. Applicant's arrangement is looking for the longest continuous regularly recurring period of time for which a channel has an acceptable noise level. Such a channel can then be assigned for use over the duration that it is expected to have an acceptable noise level. Indeed, applicant has specifically recited in his specification at page 3, lines 1-3, that "advantageously, the spectrum analyzers employed typically maintain a history of the channel power, which permits the selection of the channel to avoid known periodic noise problems".

As indicated hereinabove, Nagel et al. takes the opposite approach from that of applicant. Thus, if one were to incorporate a reduction in a time period into Nagel et al., as suggested by the Office Action, in order to arrive at applicant's claimed invention, one would be subverting the character of Nagel et al. in that one would be trying to make the resulting combination the opposite of what Nagel et al. teaches. Thus, Nagel itself effectively teaches away from the Office Action's proposed modification. Thus, applicant's invention cannot be obvious from a combination of Nagel et al. and Moran III et al., even if Moran III et al. taught to reduce the same time period as applicant teaches and which is lacking in Nagel et al.—which applicant is not admitting.

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Moreover, given the foregoing, to do as the Office Action suggests would so change Naegel et al. as to render Naegel et al. unsatisfactory for at least one of its intended purposes. Thus, as clearly explained in M.P.E.P. 2143.01, there is no suggestion to make combine Naegel et al. with Jones et al. as proposed by the Office Action. Instead, it seems that the basis of such a suggestion must be improper hindsight from applicant's own teaching.

Therefore, applicant's claim is allowable over the combination Naegel et al. and Moran III et al. under 35 U.S.C. 103(a).

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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

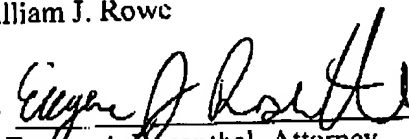
If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicant's attorney so that arrangements may be made to discuss and resolve any such issues.

In the event that an extension of time is required for this amendment to be considered timely, and a petition therefor does not otherwise accompany this amendment, any necessary extension of time is hereby petitioned for, and the Commissioner is authorized to charge the appropriate cost of such petition to the Lucent Technologies Deposit Account No. 12-2325.

Respectfully,

William J. Rowe

By


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Lucent Technologies Inc.

Date:

11/16/05

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